

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3184 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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RANJITSINH PRATAPSINH VASAVA POWER OF ATTORNEY

Versus

SECRETARY REVENUE DEPTT  
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Appearance:

MR YV SHAH for Petitioners  
MR PR JOSHI AGP for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/09/2000

ORAL JUDGEMENT

Heard the learned advocates. The respondent no.2  
has not entered her appearance.

The petitioners are the heirs of one Pratapsinh Vasava, a tribal of Bharuch District, and challenge the judgment and order dated 7th December, 1991, passed by the State Government in Revision Application No. 19/91.

It appears that the above referred Pratapsinh Vasava was a tenant of the land bearing Survey No. 20 (now Block No. 34) admeasuring 5-Acre-20 Gunthas, situated at village-Dhanshera, Taluka-Sagbara since the year 1958. One Panchiya Vasava, also a Tribal, was the owner. Pratapsinh Vasava purchased the said land for consideration from Panchiya Vasava on 1st May, 1961, and executed a sale-deed on 1st March, 1967. A suo-motu action under section 73-A read with section 79-A of the Bombay Land Revenue Code, 1879 (hereinafter referred to as 'the Code') was initiated by the Deputy Collector (Tenancy) in Sagbara Case No 265/74 by issuing a notice upon late Pratapsinh Vasava to show cause why the sale made in his favour should not be declared as void as no prior sanction of the Competent Authority had been obtained. The Deputy Collector held that Pratapsinh Vasava was in actual possession of the land since 20th April, 1958, and had purchased the land on 1st May, 1961. The provisions made in section 73-A of the Code had been made applicable to village Sagbara on 1st August, 1963. The said provision, therefore, was not applicable and no action under section 79-A of the Code was warranted. Accordingly, the proceedings were disposed of on 22nd September, 1975. The proceedings under section 73-A and section 79-A of the Code were initiated afresh in Sagbara Case No. 114/79 by a show cause notice issued on 26th May, 1978. The said case was also closed on 31st July, 1978, since the transaction in question was found to be legal and valid. The heirs of the vendor - Panchia Vasava challenged the above referred order dated 22nd September, 1975 in Revision before the State Government on 1st November, 1984. The Government, vide its order dated 12th May, 1986, quashed the order dated 22nd September, 1975, and remanded the matter for trial afresh. The above referred order dated 12th May, 1986, was challenged by the petitioner (successor-in-title of Pratapsinh Vasava) before this court in Special Civil Application No. 4134/86. Since the order impugned was that of remand, this court did not think it fit to interfere with the same. However, the ad-interim order granted earlier was extended upto 14th August, 1987 and was further extended upto 31st October, 1987. In spite of the orders made on Special Civil Application No. 4134/86, the petitioners were dispossessed of the land by order dated 16th December, 1988. After the remand, the

matter was tried as Case No. 1/88. Once again the Deputy Collector under his order dated 25th November, 1989, held that the transaction in question was between the Tribals which had taken effect after 3rd March, 1961, and prior to 31st March, 1981, the said transfer was, therefore, held to have been regularised under section 73-AA of the Code. The said order was challenged by one Monghuben-daughter of the vendor-Panchiya Vasava-the present respondent no.2 before the Collector in Appeal No. 2/90 which was dismissed on 20th April, 1991. Feeling aggrieved, the said Monghuben preferred Revision before the State Government on 7th December, 1991. The Government, under its order dated 7th December, 1991, held that the transfer in question was valid and the question of its being regularised under section 73-AA of the Code did not arise. The orders of the Deputy Collector dated 25th September, 1989 and of the Collector dated 20th April, 1991, were, therefore, quashed and set aside. Feeling aggrieved, the petitioners have preferred the present petition.

Section 73 of the Code provides that - " an occupancy shall, subject to the provisions contained in section 56 and to any conditions lawfully annexed to the tenure, and save as otherwise prescribed by law, be deemed an heritable and transferable property ". Section 73-A (1) & (2) of the Code reads as under :

73-A : POWER TO RESTRICT RIGHT OF TRANSFER :

- (1) Notwithstanding anything in the foregoing section, in any tract or village to which the State Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, occupancies shall not after the date of such notification be transferable without the previous sanction of the Collector.
- (2) The State Government may, by notification in the Official Gazette, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this sanction.

Thus, the power to transfer the land situated in any tract or village before introduction therein of a

original Survey settlement under section 103 of the Code, is restricted after the State Government by a Notification declares the provisions of section 73-A to be applicable. Section 73-AA (3) (b) of the Code reads as under :

73-AA : RESTRICTION ON TRANSFER OF OCCUPANCIES OF  
TRIBALS TO TRIBALS OR NON-TRIBALS :

- (1) xxx    xxx    xxx
- (2) xxx    xxx    xxx
- (3) (a) xxx    xxx    xxx

(b) where -

- (i) a tribal in contravention of sub-section (1) of section 73-A or of any other law for the time being in force has transferred his occupancy to another tribal at any time during the period commencing on the 4th April, 1961 and ending on the day immediately before the date of commencement of the Bombay Land Revenue (Gujarat Second Amendment) Act, 1980 (Guj. 37 of 1980), and
- (ii) the tribal transferee or his successor in interest has not been evicted from such occupancy under section 79-A.

the transfer of occupancy shall be valid, as if it were made with the previous sanction of the Collector under section 73-A.

The Chief Secretary (Appeals) under his order dated 7th December, 1991, has held that the original survey settlement under the Bombay Land Revenue Code in Rajpipla was already introduced. In that view of the matter, the provisions contained in section 73-A of the Code were not applicable to the transfer in question. The said transfer was legal and valid and was not required to be held to have been regularised under section 73-AA of the Code. The orders of the authorities below holding that the transfer in question stood regularised under section 73-AA of the Code have, therefore, been set aside.

I am of the view that the petition is wholly misconceived. It is held under the impugned order that

in the area of Rajpipla (i.e. where the land in dispute is situated), the original survey settlement under the Code was already introduced and section 73-A of the Code, therefore, did not apply. Since section 73-A of the Code did not apply, the previous sanction of the Collector was not required. Hence, the transfer in question was legal and valid. Therefore, no cause of action can be said to have been accrued to the petitioners. On the contrary, the order is in favour of the petitioners and the petitioners who had already been dispossessed in the year 1988 ought to have been immediately put into the possession of the land in question. To me, it appears to be an unfortunate case where a purchaser of the land for consideration has been dragged into unnecessary litigation for 40 years after the purchase. First, the proceedings were initiated under section 73-A and 79-A of the Code in the year 1974 i.e. more than ten years after the transfer. Though the transfer was found to be legal and valid by the Deputy Collector and though the order was not challenged further, the proceedings afresh were initiated in the year 1978 unnecessarily which has led to a long-drawn litigation and also the dispossession of the petitioners from their lawfully purchased land.

As I have held that the petition is misconceived, same is dismissed. The authorities below will act in accordance with the impugned order dated 7th December, 1991, and will take all steps to put the petitioners in possession immediately. The compliance hereof shall be reported to this court latest by 31st December, 2000. The Government shall also pay the cost of the litigation to the petitioners, which is quantified at Rs.5000/-. The respondent no.2 shall bear her own costs. Rule is discharged. The Registry will send the writ forthwith.

( MS R.M.DOSHIT J )

JOSHI